BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 304 of the Telecommunications Act of 1996	)	CS Docket No. 97-80
	)	
Commercial Availability of Navigation Devices	)	
	)	
Compatibility Between Cable Systems and Consumer Electronics Equipment	)	PP Docket No. 00-67
	)	
Digital Broadcast Copy Protection	)	MB Docket No. 02-230
	)	

REPLY COMMENTS OF PHILIPS ELECTRONICS NORTH AMERICA CORPORATION

Thomas B. Patton
Vice President, Government Relations
Philips Electronics North America Corporation
1300 Eye Street, N.W.
Suite 1070 East
Washington, D.C. 20005
(202) 962-8550

Thomas M. Hafner
Vice President and General Counsel
Philips Consumer Electronics North America, a division of Philips Electronics North America Corporation
64 Perimeter Center, East
Atlanta, GA 30346
(770) 821-2232

April 28, 2003

TABLE OF CONTENTS

Page

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 304 of the Telecommunications Act of 1996	)	CS Docket No. 97-80
	)	
Commercial Availability of Navigation Devices	)	
	)	
Compatibility Between Cable Systems and Consumer Electronics Equipment	)	PP Docket No. 00-67
	)	
Digital Broadcast Copy Protection	)	MB Docket No. 02-230
	)	

REPLY COMMENTS OF PHILIPS ELECTRONICS NORTH AMERICA CORPORATION

Philips Electronics North America Corporation ("Philips") respectfully files these Reply Comments in response to the Commission's *Further Notice of Proposed Rulemaking*[1] in the above-referenced proceedings, which seeks comment on the Memorandum of Understanding and proposed Commission rules submitted by the consumer electronics and cable television industries for the establishment of a cable compatibility standard for integrated, unidirectional digital cable television receivers, as well as other unidirectional digital cable products.[2]

---

[1] *See Implementation of Section 304 of the Telecommunications Act of 1996*, CS Docket No. 97-80 and PP Docket 00-67, *Further Notice of Proposed Rulemaking*, 18 FCC Rcd 518 (2003) ("*FNPRM*"). Philips also is filing this document in the Commission's Digital Broadcast Content Protection docket, *In the Matter of Digital Broadcast Copy Protection*, MB Docket No. 02-230, *Notice of Proposed Rulemaking*, 17 FCC Rcd 16027 (2002) ("*broadcast flag proceeding")*, given the direct implications of the instant filing on issues raised in that proceeding.

[2] *See* Letter from Carl E. Vogel, President and CEO, Charter Communications, *et al.*, to Michael K. Powell, Chairman, FCC (Dec. 19, 2002) ("*NCTA/CEA Letter*"); *Memorandum of Understanding Among Cable MSOs and Consumer Electronics Manufacturers* ("Cable Compatibility MOU") (signed by Charter Communications, Inc., Comcast Cable Communications, Inc., Cox Communications, Inc., Time Warner Cable, CSC Holdings, Inc., Insight Communications Company, L.P., Cable One, Inc., Advance/Newhouse Communications, Hitachi America, Ltd., JVC Americas Corp., Mitsubishi Digital Electronics America, Inc., Matsushita Electric Corp. of America (Panasonic), Philips Consumer Electronics North America, Pioneer North America, Inc., Runco International, Inc., Samsung Electronics

I. INTRODUCTION AND EXECUTIVE SUMMARY

Philips has a very proud history—and today is at the cutting edge—of introducing world-class products designed to bring consumers the benefits of digital television. Philips was a founding member of the Grand Alliance, which pioneered the ATSC DTV standard, and has been a leader in the development and implementation of terrestrial digital television in the United States. Philips' strong record of achievement in technological innovation—and consumer acceptance of these technologies—is directly attributable to the availability and use of open standards, a commitment to preserving consumers' fair-use expectations, and a competitive environment that promotes the development and introduction of innovations while not overburdening manufacturers.

There is consensus that ensuring consumers have "plug and play" compatibility between cable systems and digital television receivers and other DTV products (*i.e.,* the ability to receive cable-delivered digital television services without the need for a separate set-top box) is a critical step in completing the successful transition to digital television. As noted by House Energy and Commerce Committee Chairman Tauzin:

> [C]onsumers reasonably expect that consumer electronics equipment, including … TV sets, will work with the cable system. And given that 70 percent of consumers receive their broadcast signals via cable today, that makes a lot of sense. Portability of consumer electronics equipment and nationwide inoperability with cable television systems and digital television receivers equivalent to today's cable-ready analog televisions is an essential element to ensuring consumer acceptance and sufficient penetration of DTV. And so the staff discussion draft requires this. You know, I buy my equipment in New Orleans and I moved to Washington, DC to come to work for the good folks of Louisiana. It ought to work here and visa versa anywhere in the country.[3]

Corporation, Sharp Electronics Corporation, Sony Electronics, Inc., Thomson, Toshiba America Consumer Electronics, Inc., Yamaha Electronics Corporation, USA, and Zenith Electronics Corporation) ("*DTV 'Plug and Play' Agreement*").

[3] Statement of The Honorable W. J. "Billy" Tauzin, Hearing on H.R. ___, Regarding the Transition to Digital Television, Before the Subcomm. on Telecommunications and the Internet of the House Comm.

Indeed, the continued glaring absence of this basic functionality in DTV products will only serve to confirm consumer fears that the DTV transition is not ripe for, or not worthy of, their interest and investment. Achieving "plug and play" compatibility rapidly and in a manner that expands consumer access to—and desire for—DTV is the objective of the DTV "Plug and Play" Agreement. Philips strongly supports the joint comments of the Consumer Electronics Association ("CEA") and Consumer Electronics Retailers Coalition ("CERC") endorsing the Agreement.[4]

Philips files these Reply Comments solely to respond to claims of the Motion Picture Association of America ("MPAA") regarding the lack of FCC jurisdiction and the inadequacy of the agreement for permitting unprotected analog connections. In each case, the MPAA's claims are totally inconsistent and irreconcilable with its positions in the broadcast flag proceeding. Its arguments in both proceedings, on both points, should be rejected.

II. THE MPAA'S CLAIMS THAT THE FCC LACKS JURISDICTION OVER THE DTV "PLUG AND PLAY" AGREEMENT BUT HAS JURISDICTION TO IMPOSE A DIGITAL BROADCAST CONTENT PROTECTION REGIME TRIGGERED BY THE BROADCAST FLAG ARE COMPLETELY INCONSISTENT AS WELL AS LEGALLY INCORRECT, AND THE FCC SHOULD DISREGARD BOTH

The MPAA asserts that the FCC lacks jurisdiction to adopt encoding rules incident to implementing the DTV "Plug and Play" Agreement, arguing that:

> [T]he Commission has no jurisdiction to adopt Subpart W. The adoption of regulations enforcing encoding rules, the imposition of obligations to use particular outputs, and the elimination of image

---

on Energy and Commerce, 107th Cong. 141 (Sept. 25, 2002) at 9. As noted in Chairman Tauzin's statement, the bipartisan Energy and Commerce Committee staff draft, released in September 2002, includes provisions expressly requiring the Commission to adopt rules ensuring "plug and play" DTV/cable compatibility. *See* "Staff Discussion Draft, H.R.___, To require the Federal Communications Commission to take actions necessary to advance the transition to digital television service, and for other purposes," (rel. Sept. 18, 2002) at § 8.

[4] *See* Joint Comments of the Consumer Electronics Association and Consumer Electronics Retailers Coalition, CS Docket No. 97-80 and PP Docket No. 00-67 (filed March 28, 2003) ("*Joint CEA/CERC 'Plug and Play' Comments*").

> constraint as an option necessarily limits and defines the property rights of copyright owners.[5]

Yet in the broadcast flag proceeding, the MPAA claims that the FCC possesses authority to impose a massive regulatory content protection regime on manufacturers, triggered by the broadcast flag, that burdens the functionality of virtually all digital television products.[6] This content protection regime proposed by the MPAA implicates numerous fundamental principles of copyright law.[7] Nonetheless, the MPAA argues that the FCC can impose this regime because

---

[5] Comments of the Motion Picture Association of America, Inc., CS Docket No. 97-80 and PP Docket No. 00-67 (filed March 28, 2003), at 12 ("*MPAA 'Plug and Play' Comments*"). Although these Reply Comments focus on the multiple, irreconcilable inconsistencies between MPAA's stated positions in the instant and broadcast flag proceedings, particularly regarding FCC jurisdiction and the availability of unprotected analog connections, Philips must observe that MPAA's depiction, *supra,* of the inter-relationship between Subpart W of the DTV "Plug and Play" Agreement and the property rights of copyright owners mischaracterizes intellectual property law. Copyright law does not give a copyright holder the right to use, or prevent the use, of any particular output. Nor does copyright law give the holder the right to constrain images. Rather than grant unlimited "property rights," as the MPAA suggests, copyright law confers particular rights limited in time and scope as circumscribed by statute. It does so, ultimately, as a means of encouraging innovation for the benefit of the public, not for the benefit of the copyright holder. *See* 20th Century Music Corp. v. Aken, 422 U.S. 151, 156 (1975). Nor does it allow the holder to prevent "fair use" of content, or other lawful uses. *See* Sony Corp. v. Universal City Studios, Inc., 464 U.S. 417, 442, 448-56 (1984); RIAA v. Diamond Multimedia Sys., Inc, 180 F.3d 1072, 1079 (9th Cir. 1999). *See also,* MGM Studios Inc. v. Grokster, Ltd., CV 01-08541-SVW, slip. op. at 11, 12, 27 (C.D. Cal. Apr. 25, 2003).

[6] *See* Comments of the Motion Picture Association of America, Inc., *et al*., MB Docket No. 02-230 (filed Dec. 6, 2002), at 10 ("*MPAA Broadcast Flag Comments*") (stating that "[t]he Commission should adopt rules implementing the Broadcast Flag solution" as well as "rules to resolve any outstanding compliance, robustness, and enforcement issues").

[7] For example, as Philips has pointed out, regardless of what encryption technology is used in conjunction with the flag, the required incorporation of that encryption into a consumer electronics device will be governed by a license, including associated compliance, robustness and encoding rules. Will those rules preserve consumers' fair use expectations? Will they require consumer electronics or computer products to respond to particular technological measures despite Congress's policy decision in the Digital Millennium Copyright Act not to impose such requirements on manufacturers? *See* Comments of Philips Electronic North America Corporation, MB Docket No. 02-230 (filed Dec. 6, 2002; Erratum filed Dec. 9, 2002), at 6-11, 19-21 ("*Philips Broadcast Flag Comments*"); Reply Comments Philips Electronic North America Corporation, MB Docket No. 02-230 (filed Feb. 19, 2003), at 2 ("*Philips Broadcast Flag Reply Comments*"); See Reply Comments of the Consumer Electronics Association, MB Docket 02-230 (filed Feb. 19, 2003), at 2, 4, 7-8; Reply Comments of the Home Recording Rights Coalition, MB Docket 02-230 (filed Feb. 19, 2003), at 6; Reply Comments of Public Knowledge and Consumers Union, MB Docket 02-230 (filed Feb. 19, 2003), at 3; Reply Comments of the Electronic Freedom Foundation, MB Docket 02-230 (filed Feb. 19, 2003), at 2, 15, 24-25, 29; Reply Comments of the National Cable & Telecommunications Association, MB Docket 02-230 (filed Feb. 19, 2003), at 3, 5-7; Reply Comments of New Yorker's for Fair Use, MB Docket 02-230 (filed Feb. 19,

the FCC has "the authority to take such actions as it deems necessary to advance the public interest in the context of the digital transition."[8] The MPAA cannot have it both ways. Moreover, not only are its positions utterly inconsistent and fundamentally irreconcilable, they are legally incorrect.

The MPAA also has it backwards when it argues that the FCC lacks jurisdiction to adopt DTV "plug and play" rules but has jurisdiction to implement the broadcast flag.[9] Sections 624A and 629 authorize the FCC to adopt in the cable context the encoding rules proposed by the consumer electronics and cable industries, as the joint comments of CEA and CERC point out;[10] Congress has granted no such comparable authority in the broadcast context that would provide the FCC jurisdiction over a broadcast flag-triggered comprehensive digital content protection system.

Section 624A directs the FCC, "in consultation with representatives of the cable industry and the consumer electronics industry," to "issue such regulations as are necessary" to ensure "compatibility between televisions and video cassette recorders and cable systems … so that cable subscribers will be able to enjoy the full benefit of both the programming available on

---

2003), at 5-11; Reply Comments of Veridian Corporation, MB Docket 02-230 (filed Feb. 21, 2003), at 19-20; Joint Comments of the American Library Association, *et al*., MB Docket 02-230 (filed Dec. 6, 2003), at 1-8, 10-16, 21-22; Comments of the Information Technology Industry Council, MB Docket 02-230 (filed Dec. 6, 2003), at 5; Comments of the American Foundation for the Blind, MB Docket 02-230 (filed Dec. 6, 2003), at 2-4; Comments of the Center for Democracy and Technology, MB Docket 02-230 (filed Dec. 6, 2003), at 2; Comments of the Computer & Communications Industry Association, MB Docket 02-230 (filed Dec. 6, 2003), at 4-6; Comments of the Information Technology Association of America, MB Docket 02-230 (filed Dec. 6, 2003), at 3, 14-16; Comments of DIRECTV, Inc., MB Docket 02-230 (filed Dec. 6, 2003), at 4; Comments of the Consumer Electronics Association, MB Docket 02-230 (filed Dec. 6, 2003); Comments of Thomson Inc., MB Docket 02-230 (filed Dec. 6, 2003) at 2-4, 8-9, 17; Comments of Public Knowledge and Consumers Union, MB Docket 02-230 (filed Dec. 6, 2003) at 23.

8 *MPAA Broadcast Flag Comments* at 30.

9 *See MPAA "Plug and Play" Comments* at 12-13.

10 *See Joint CEA/CERC "Plug and Play" Comments* at 4-15; *Accord* Comments of the National Cable & Telecommunications Association, CS Docket No. 97-80 and PP Docket No. 00-67 (filed March 28, 2003), at 17.

cable systems and the functions available on their televisions and video cassette recorders."[11] Moreover, Congress made quite clear that the FCC "shall periodically review and, if necessary, modify the regulations issued pursuant to this section … to reflect improvements and changes in cable systems, television receivers, video cassette recorders, and similar technology."[12] The Commission even specifically drew the connection to digital technology as far back as 1994, stating in the *First Cable Compatibility Report and Order* that:

> [i]f new digital and other technologies have important features that are not compatible with the standards we adopt now, we will make appropriate changes in our rules to accommodate their operation. … [W]e will ensure that new incompatibilities do not arise between the digital service provided by cable systems and the digital equipment used by consumers to receive that service.[13]

Perhaps most importantly, unlike the DTV and ancillary jurisdiction provisions that the MPAA cites in support of the broadcast flag,[14] Section 624A explicitly contemplates that the FCC will address theft of service and encryption issues. Indeed, Section 624A specifically instructs the FCC to issue regulations "assuring compatibility between televisions and video cassette recorders and cable systems, consistent with the need to prevent theft of cable service."[15] Thus, the FCC has observed that its "compatibility rules must also allow for the needs and interests of cable operators in protecting their signals against theft or *unauthorized use*."[16] In

---

11 47 U.S.C. § 544a(b)(1).

12 47 U.S.C. § 544a(d).

13 *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992*, ET Docket No. 93-7, *First Report and Order*, 9 FCC Rcd 1981, at ¶ 30 (rel. May 4, 1994) ("*First Cable Compatibility Report and Order*"). *See also id*. at ¶ 4 (stating that "standards for cable digital transmissions … will be needed to ensure that compatibility is maintained as new digital cable technologies and services are introduced").

14 *See MPAA Broadcast Flag Comments* at 29-42; Reply Comments of the Motion Picture Association of America, Inc., *et al*., MB Docket No. 02-230 (filed Feb. 20, 2003), at 31-39 (citing 47 U.S.C. §§ 154, 303, 336).

15 47 U.S.C. § 544a(b)(1).

16 *First Cable Compatibility Report and Order* at ¶ 17. (Emphasis added)

issuing such regulations, the FCC is to "determine whether and, if so, under what circumstances to permit cable systems to scramble or encrypt signals or to restrict cable systems in the manner in which they encrypt or scramble signals."[17]

Section 629 similarly authorizes the Commission to ensure the commercial availability of navigation devices, including, conspicuously, cable set-top boxes. Section 629 states that:

> [t]he Commission shall, in consultation with appropriate industry standard-setting organizations, adopt regulations to assure the commercial availability, to consumers of multichannel video programming and other services offered over multichannel video programming systems, of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems.[18]

The FCC has recognized that this language, like the language of Section 624A, grants the Commission authority to address evolving technology. Indeed, the FCC has stated that "[t]he expansive nature of the language of Section 629 is a recognition that the future convergence of various types of equipment and services may result in technical innovations not foreseeable at this time."[19]

Section 629, like Section 624A, also authorizes the FCC to address content protection in the cable context. As the FCC has recognized, "Section 629(b) requires the Commission to adopt regulations that promote commercial availability while protecting system security."[20] In its *Navigation Devices Declaratory Ruling*—a well-vetted proceeding in which the MPAA actively

---

17 47 U.S.C. § 544a(b)(2).

18 47 U.S.C. § 549(a).

19 *Implementation of Section 304 of the Telecommunications Act of 1996*, CS Docket No. 97-80, *Report and Order*, 13 FCC Rcd 14775, at ¶ 26 (1998).

20 *Implementation of Section 304 of the Telecommunications Act of 1996*, CS Docket No. 97-80, *Order on Reconsideration*, 14 FCC Rcd 7596, at ¶ 27 (1999).

participated—the FCC concluded that Section 629 addressed copy protection issues. It observed that:

> [c]opy protection for digital video content in its current formulation and in a very broad sense, involves techniques of encoding content as it crosses interfaces and of establishing two-way communication paths and protocols across these interfaces so that video content is only released after the receiving device is queried by the sending device and confirms that it is an eligible content recipient.[21]

As a result, the FCC concluded that cable operators may incorporate a degree of copy protection into their systems, and said that any resulting commercial availability "issues are best resolved if specific concerns involving finalized licenses that implicate [the] navigation devices rules are presented to the Commission."[22] Ironically, MPAA and other content providers were vociferous in advocating that the FCC adopt this position,[23] in stark contrast to MPAA's challenge to FCC jurisdiction here.

Thus, Sections 624A and 629 clearly authorize the FCC to address consumer electronics interoperability and content protection issues in the cable context, and explicitly authorize the FCC to update those rules for digital technology. It is this authority that not only allows, *but directs*, the FCC to adopt the proposed DTV interoperability and encoding rules to bring its regulations into the digital age and accomplish the DTV transition as envisioned by Congress. That Congress adopted these provisions in the cable context is quite logical, as cable is a subscription-based service based on conditional access.

---

[21] *See Implementation of Section 304 of the Telecommunications Act of 1996*, CS Docket No. 97-80, Further Notice of Proposed Rulemaking and Declaratory Ruling, 15 FCC Rcd 18199, at ¶¶ 25-29 (2000) ("*Navigation Devices Declaratory Ruling*").

[22] *See id.* at ¶ 29.

[23] *See id.* at ¶¶ 19-22 & nn.40-55. That the MPAA previously *supported* the Commission's authority to adopt rules permitting the incorporation of encryption technologies – and their attendant licensing requirements – in proceedings in this docket just three years ago, but now *opposes* that same authority in current proceedings in this docket, speaks for itself and should be considered carefully by the Commission in determining the credibility of MPAA's current advocacy.

By contrast, broadcast television has always been provided to consumers for free and in the clear, so it is not surprising that Congress has *not* granted the FCC authority to regulate consumer electronics interoperability and adopt encoding rules in the broadcast arena. As Philips explained in the broadcast flag proceeding, the FCC ordinarily cannot regulate traditionally unregulated consumer electronics manufacturers absent a specific statutory delegation of authority.[24]

III. MPAA'S POSITIONS IN THE DTV-CABLE COMPATIBILITY AND BROADCAST FLAG PROCEEDINGS REGARDING THE ACCEPTABILITY OF UNPROTECTED ANALOG CONNECTIONS ARE IRRECONCILABLE

In its Comments in this proceeding, the MPAA, after lauding the cable and consumer electronics industries for agreeing to incorporate secure digital connections in HDTV sets and MSO-supplied high-definition set-top boxes,[25] nonetheless concludes that:

> …because of the continued availability of analog connections permitted under the Agreement, the Agreement *fails to achieve meaningful protection of digital content.*"[26]

To address what it perceives to be this fatal flaw, MPAA then proposes the "stead[y] retire[ment] of analog connections on consumer equipment."[27]

Yet in Comments and Reply Comments in the Commission's broadcast flag proceeding, the MPAA, once again, takes a diametrically opposite view. In that proceeding, the MPAA argued in the most vigorous fashion for the Commission's immediate adoption of its proposed

---

[24] *See Philips Broadcast Flag Comments* at 28-33, *Philips Broadcast Flag Reply Comments* at 34-42.

[25] *See MPAA "Plug and Play" Comments* at 2.

[26] *Id.* at 2. (Emphasis added).

[27] *Id.* at 12. In fact, Philips pointed out MPAA members companies' parallel efforts to bring about the elimination of the very analog connections its trade association claimed made its encryption-based broadcast flag proposal acceptable to consumers vis-à-vis the continued viability of legacy equipment. *See Philips Broadcast Flag Reply Comments* at n.55.

DTV content protection system, *which admittedly permitted the continued availability of the very same unprotected analog connections*. Moreover, the MPAA touted the continued availability of unprotected analog connections as the reason why its proposed broadcast flag system "would not impact"—and therefore would be acceptable to—consumers:

> The Broadcast Flag requirement will have no impact on consumers' existing equipment…Since analog outputs are a permitted output under the Requirements, existing analog displays, players, and recorders will continue to function with the new compliant products under the Compliance and Robustness Requirements.[28]

The obvious inconsistency of these two arguments raises the fundamental question: How can the availability of unprotected analog connections be a fatal flaw in one DTV content protection system (for cable) and, yet, be not only acceptable, but a *virtue,* in another DTV content protection system (for over-the-air DTV)? As much as the MPAA may like to have it both ways, these two views simply cannot coexist.

The potential consequences posed by this inconsistency are particularly troubling. Philips urges the Commission to take all steps to avoid a possible trap for consumers, wherein the MPAA broadcast flag system is accepted—largely on the strength of its proponents' assurances that the availability of unprotected analog connections mitigates any harm to consumers—only to have those same analog connections eliminated later. Indeed, as noted *supra,* MPAA suggests such elimination in its Comments on the DTV "Plug and Play" Agreement, thereby depriving consumers of the only safety valve they had to ensure the viability of their legacy equipment. There is no surer recipe for dooming the transition to death by consumer revolt.

---

[28] *See MPAA Broadcast Flag Comments* at 27-28.

IV. CONCLUSION

For the reasons stated above, the Commission should reject MPAA's advocacies *du jour* and do everything within its authority *now* to move the DTV transition forward in a meaningful and pro-consumer fashion. Specifically, the Commission should: (1) exercise its clear statutory authority under Sections 624A and 629 and adopt expeditiously the DTV "Plug and Play" Agreement so as to speed the availability to consumers of digital-cable-ready DTV products; and (2) defer, pending a specific grant of authority by Congress, any formal action that would mandate consumer electronics equipment to comply with specific content protection systems and, concurrently, investigate alternative, and preferably holistic, content protection solutions for digital broadcast content protection that ensure protection of content over both digital and analog connections.

Respectfully submitted,

PHILIPS ELECTRONICS NORTH AMERICA CORPORATION

Thomas B. Patton
Vice President, Government Relations
Philips Electronics North America Corp.
1300 Eye Street, N.W.
Suite 1070 East
Washington, D.C. 20005
(202) 962-8550

Thomas M. Hafner
Vice President and General Counsel
Philips Consumer Electronics North America, a division of Philips Electronics North America Corporation
64 Perimeter Center, East
Atlanta, GA 30346
(770) 821-2232

April 28, 2003